Supreme Court, U.S.
FILED
00 397 SEP 6 2000
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

GROUP DATA SERVICES, INC.,

Petitioner,

v.

JOHN E. LINTON and MORNINGSIDE CORPORATION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

BOULT, CUMMINGS, CONNERS & BERRY, PLC
SAMUEL D. LIPSHIE
Counsel of Record
414 Union Street, Suite 1600
Nashville, Tennessee 37219
Telephone: (615) 244-2582
Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

4700

QUESTION PRESENTED FOR REVIEW

1. Whether if a jury finds willful misappropriation of trade secrets, a district court may permit continued use of such trade secrets without depriving the petitioner of its right to trial by jury.

PARTIES TO THE PROCEEDING

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

1. Group Data Services, Inc.
2. John E. Linton
3. Morningside Corporation
4. Southeastern Banking Corporation

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held company owning ten percent (10%) or more of Group Data Services, Inc.'s stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES v

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED IN THE CASE .. 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION 5

A. The Seventh Amendment Commands a Court to Follow the Jury's Verdict in Fashioning Equitable Relief 6

B. The Partial Injunction Entered by the District Court Allows Respondents to Continue to Use Petitioner's Trade Secrets with Absolute Impunity in Derogation of the Jury's Verdict 9

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

A.L. Laboratories, Inc. v. Philips Roxane, Inc., 803 F.2d 378 (8th Cir. 1986) 14

Bryan v. Kershaw, 366 F.2d 497 (5th Cir. 1966) 11, 14

Caban-Wheeler v. Elsea, 71 F.3d 837 (11th Cir. 1996) 7

C & W Leasing, Inc. v. Orix Credit Alliance, Inc., 957 F.2d 815 (11th Cir. 1992)..... 7

CMAX/Cleveland, Inc. v. UCR, Inc., 804 F. Supp. 337 (M.D. Ga. 1992) 10, 15

Dairy Queen, Inc. v. Wood, 369 U.S. 469, 82 S. Ct. 894, 8 L. Ed. 2d 44 (1962) 6

Empire Steam Laundry Co. v. Lozier, 130 P. 1180 (Cal. 1913) 9

Essex Group, Inc. v. Southwire Co., 501 S.E.2d 501 (Ga. 1998)..... 10

Fidelity & Casualty Co. of New York v. Funel, 383 F.2d 42 (5th Cir. 1967)..... 8

General Electric Co. v. Sung, 843 F. Supp. 776 (D. Mass. 1994) 14, 15

In re Lewis v. Sears, Roebuck & Co., 845 F.2d 624 (6th Cir. 1988) 7

Integrated Cash Management Services, Inc. v. Digital Transactions, Inc., 920 F.2d 171 (2d Cir. 1990).....11, 12, 13

Kitchen v. Chippewa Valley Schools, 825 F.2d 1004 (6th Cir. 1987)..... 7

TABLE OF AUTHORITIES – Continued

Page

Kolstad v. American Dental Ass'n, 108 F.3d 1431 (D.C. Cir. 1997) *rev'd on other grounds*, 527 U.S. 526 (1999) 6

Lamb-Weston, Inc. v. McCain Foods, Ltd., 941 F.2d 970 (9th Cir. 1991) 14

Lincoln v. Bd. of Regents of University Sys. of Georgia, 697 F.2d 928 (11th Cir. 1983), *cert. denied*, 464 U.S. 826 (1983) 7

Lindsey v. American Cast Iron Pipe Co., 810 F.2d 1094 (11th Cir. 1987) 7

Mitchell v. Fruehauf Corp., 568 F.2d 1139 (5th Cir. 1978) 7

Prescott v. Morton Int'l, Inc., 769 F. Supp. 404 (D. Mass. 1990) 14

Richardson v. Leeds Police Dept., 71 F.3d 801 (11th Cir. 1995) 7

Union Carbide Corp. v. Tarancon Corp., 742 F. Supp. 1565 (N.D. Ga. 1990) 10

WebGraphics v. Jos. Hunkeler, Ltd., 682 F.2d 59 (2d Cir. 1982) 11, 14

OTHER AUTHORITIES

Fed. R. Civ. P. 65 5

Georgia Trade Secrets Act, O.C.G.A. § 10-1-762 ... 2, 5, 10

4 *R. Milgrim, Milgrim on Trade Secrets* § 15.02 [1][a], pp. 15-17-18 (1998) 9

U.S. Const. amend. VII 2, 6

28 U.S.C. § 1254 1

28 U.S.C. § 1332 3

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

1. The United States District Court for the Southern District of Georgia's Order Regarding Motion for Entry of Permanent Injunction, May 11, 1999, reprinted at App. 1.

2. The United States District Court for the Southern District of Georgia's Order for Injunctive Relief, May 11, 1999, reprinted at App. 11.

3. The unreported *per curiam* Opinion of the United States Court of Appeals for the Eleventh Circuit, March 22, 2000, reprinted at App. 16.

4. The unreported *per curiam* Opinion of the United States Court of Appeals for the Eleventh Circuit, June 8, 2000, reprinted at App. 18.

STATEMENT OF JURISDICTION

The *per curiam* decision of the Court of Appeals was entered on March 22, 2000. A Petition for Rehearing and for Rehearing En Banc was denied on June 8, 2000. Petitioner invokes the jurisdiction of this Court as set forth in 28 U.S.C. § 1254 and seeks the issuance of a Writ of Certiorari pursuant to Supreme Court Rule 10.1(a) because, among other reasons, the Court of Appeals has sanctioned so far a departure from the accepted and usual course of judicial proceedings by the lower court as to call for an exercise of this Court's supervisory power.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED IN THE CASE

U.S. Const. amend. VII:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Georgia Trade Secrets Act, O.C.G.A. § 10-1-762, Injunctive Relief:

> (a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in appropriate circumstances for reasons including, but not limited to, an elimination of commercial advantage that otherwise would be derived from the misappropriation or where the trade secret ceases to exist due to the fault of the enjoined party or others by improper means.
>
> (b) In exceptional circumstances, if the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of

misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

(d) In no event shall a contract be required in order to maintain an action or to obtain injunctive relief for misappropriation of a trade secret.

STATEMENT OF THE CASE

Petitioner seeks review of the *per curiam* decision of the Eleventh Circuit Court of Appeals. The basis for federal jurisdiction in the court of first instance, the United States District Court for the Southern District of Georgia, was diversity of citizenship pursuant to 28 U.S.C. § 1332, in that the Petitioner and the Respondents were each citizens of different states and the matter in controversy, exclusive of interest and costs, exceeded Seventy Five Thousand Dollars ($75,000).

The following facts are material to consideration of the question presented: Petitioner, Group Data Services, Incorporated ("Group Data") is the owner of the Cardinal/400 computer software package, which is a complete banking software program designed specifically for small to medium sized community banks. In 1989, Group Data contracted with Respondent John Linton and his former business partner for the development of the original version of Cardinal/400. It took Mr. Linton and his associates approximately eighteen (18) months to create the prototype version of Cardinal/400, which they sold to

Group Data for $500,000. After the Cardinal/400 software was developed, Mr. Linton became employed by Group Data as a computer programmer. Mr. Linton eventually received over $900,000 from Group Data in connection with the development of Cardinal/400. Over the next five (5) years following the development of the initial or prototype version of Cardinal/400, Group Data's personnel made significant improvements and upgrades to the source code of Cardinal/400, Group Data's only product, at an expense of millions of dollars.

In May 1996, Mr. Linton formed his own company, Respondent Morningside Corporation, to compete with Group Data. Mr. Linton then resigned from Group Data and unlawfully used a copy of the source code from Group Data's 1996 advanced version of the upgraded Cardinal/400 software to develop a competing banking software program called Morningside. At the trial of this case, the jury unanimously found that Group Data's upgraded Cardinal/400 software constituted Group Data's trade secrets and found that Respondents willfully and maliciously misappropriated these trade secrets when they created the Morningside software. The jury awarded Group Data damages of $98,380.00, the amount of revenue Respondents had earned from the Morningside software which incorporated Group Data's trade secrets. Such revenues were kept artificially low by Respondents, who "licensed" the competing Morningside software for free, including to current bank customers of Group Data.

Following the jury's finding that Respondents had willfully and maliciously misappropriated Group Data's trade secrets, Group Data moved the district court for the

entry of a permanent injunction, pursuant to O.C.G.A. § 10-1-762(a) and Fed. R. Civ. P. 65, seeking to enjoin the Respondents from any further use, marketing and exploitation of the Morningside software which embodies Group Data's trade secrets. Significantly, Group Data did not seek to enjoin Respondents from continuing to develop and market banking software in general, but instead merely sought to prevent Respondents from using and marketing the Morningside software that incorporates Group Data's trade secrets. Nevertheless, and despite the jury's finding of willful and malicious misappropriation, the district court refused to permanently enjoin Respondents from using Group Data's trade secrets. Instead, the district court enjoined Respondents from further marketing of Morningside for a period of only four (4) months, even though the Cardinal/400 software remains a trade secret of Group Data and has never entered the public domain.

REASONS FOR GRANTING THE PETITION

This case presents a question of exceptional importance and significance to the owners of intellectual property, namely, whether if a jury finds a willful misappropriation of trade secrets, a district court may permit the continued and future use of the confidential trade secrets without depriving Petitioner of its constitutional right to a trial by jury.

The decision by the Court of Appeals that sanctioned the district court's failure to enjoin the Respondents' continued use of Group Data's trade secrets departs from

the accepted rules governing trade secrets and eviscerates the jury's verdict of willful and malicious trade secret misappropriation. The four (4) month injunction entered by the district court allows the Respondents to continue to use, with absolute impunity and judicial and appellate sanction, the trade secrets they misappropriated from Group Data that – to this day – have *never* been publicly disclosed. The Respondents are now using and marketing the Morningside banking software which embodies the trade secrets they misappropriated from Group Data, thus forcing Group Data to compete against its *own* product in the marketplace. This result is plainly contrary to the applicable law and nullifies the jury's verdict in contravention of Petitioner's Seventh Amendment right to a trial by jury.

A. The Seventh Amendment Commands a Court to Follow the Jury's Verdict in Fashioning Equitable Relief.

The Seventh Amendment to the United States Constitution commands that "no fact tried by a jury shall be otherwise re-examined in any Court of the United States. . . . " U.S. Const. amend. VII. In accordance with this mandate, when a case contains claims triable to a jury and claims triable to the court that involve common issues of fact, the jury's resolution of those issues governs the entire case. *Kolstad v. American Dental Ass'n*, 108 F.3d 1431, 1440 (D.C. Cir. 1997), *rev'd on other grounds*, 527 U.S. 526 (1999). Otherwise, parties would be denied their right to a jury trial, and there would exist the possibility of a conflict between the findings of the jury and the trial court. *See generally Dairy Queen, Inc. v. Wood*, 369 U.S. 469,

477-79, 82 S. Ct. 894, 900-01, 8 L. Ed. 2d 44 (1962) (The Constitution requires that the jury determine all factual issues common to a claim for equitable relief before the equitable claims are decided by the court.). While a court generally may have broad equitable powers, these powers are circumscribed when the court is fashioning relief after a jury verdict. *Richardson v. Leeds Police Dept.*, 71 F.3d 801, 806 (11th Cir. 1995) (To the extent that elements of two types of claims mirror one another, the jury's findings on legal issues are binding in resolving equitable issues.).

The Eleventh Circuit has recognized this fundamental principle, holding in *Lincoln v. Bd. of Regents of University Sys. of Georgia*, 697 F.2d 928, 934 (11th Cir. 1983), *cert. denied*, 464 U.S. 826 (1983), that when a party has the right to a jury trial on an issue, the judge is "bound by the jury's determination of that issue as it affects his disposition on an accompanying equitable claim." *Accord Caban-Wheeler v. Elsea*, 71 F.3d 837, 844 (11th Cir. 1996); *C & W Leasing, Inc. v. Orix Credit Alliance, Inc.*, 957 F.2d 815, 821 (11th Cir. 1992); and *Kitchen v. Chippewa Valley Schools*, 825 F.2d 1004, 1014 (6th Cir. 1987). Federal law is well-settled that a court may not make findings contrary to or inconsistent with the jury's resolution of an issue as implicitly reflected in its verdict. *In re Lewis v. Sears, Roebuck & Co.*, 845 F.2d 624, 629 (6th Cir. 1988) (The legal claim must be tried first before a jury and the equitable claim resolved subsequently in light of the jury's determination of the legal claim.); *Lindsey v. American Cast Iron Pipe Co.*, 810 F.2d 1094 (11th Cir. 1987). Further, a district court is obligated to view the evidence in the light most favorable to the jury's verdict, *Mitchell v. Fruehauf Corp.*, 568 F.2d

1139, 1142 (5th Cir. 1978); *Fidelity & Casualty Co. of New York v. Funel*, 383 F.2d 42, 44 (5th Cir. 1967).

Here, the district court violated Petitioner's right to a trial by jury when it exercised its equitable powers in fashioning the injunction without regard to the jury's verdict. As the Court of Appeals correctly noted in its decision, the jury determined that the software used, marketed and exploited by Respondents constituted a trade secret belonging to Group Data. App. at 16. The jury's factual findings establish without dispute that Respondents willfully and maliciously misappropriated Group Data's trade secrets, thereby converting the intellectual property of Group Data to their own use and commercial benefit. These findings were binding on the district court in his determination of Petitioner's claim for equitable relief. Yet, the district court issued an injunction that wholly failed to remedy the injury found by the jury – the willful and malicious misappropriation of Group Data's trade secrets. The district court's injunction, which only enjoined Respondents on a limited basis as to marketing for a period of four months, is wholly inconsistent with the jury's finding that Respondents willfully and maliciously misappropriated Group Data's trade secrets. Indeed, the district court has failed to address the very harm found by the jury, Respondents' malicious theft of Group Data's trade secrets, and has disregarded the verdict by allowing Respondents to continue to use and profit from these trade secrets which have never entered the public domain.

The district court's failure to permanently enjoin Respondents from using Group Data's trade secrets directly contravenes the jury's finding of willful and

malicious misappropriation and leaves Group Data in the same untenable and manifestly unjust position it was in before the trial of its claims, competing against its own product in the marketplace. By affirming the district court, the Court of Appeals has sanctioned the complete disregard of the Seventh Amendment's mandate that the district court follow the jury's findings in resolving the claims for equitable relief, thereby violating Group Data's constitutional right to a trial by jury.

B. The Injunction Entered by the District Court Allows Respondents to Continue to Use Petitioner's Trade Secrets with Absolute Impunity in Derogation of the Jury's Verdict.

It is axiomatic that a finding of trade secret misappropriation entitles a plaintiff to an injunction enjoining the misappropriation. The leading trade secrets commentator, Roger Milgrim, has recognized that a prevailing plaintiff in a trade secret misappropriation action is ordinarily entitled to injunctive relief enjoining the misappropriation, an injunction being the remedy of choice for misappropriation.

> Injunctive relief is the most commonly sought form of relief in trade secret litigation. Indeed, that equity will protect against the unwarranted disclosure or use of a trade secret is "settled beyond peradventure."

4 *R. Milgrim, Milgrim on Trade Secrets* § 15.02 [1][a], pp. 15-17-18 (1998) (quoting *Empire Steam Laundry Co. v. Lozier*, 130 P. 1180, 1182 (Cal. 1913)).

The Georgia Trade Secrets Act, O.C.G.A. § 10-1-762(a), specifically provides for the entry of injunctive relief and Georgia courts routinely enter injunctions in trade secrets cases, an injunction usually being the only way to prevent a misappropriator from continuing to profit from its wrongdoing. *See, e.g., Essex Group, Inc. v. Southwire Co.*, 501 S.E.2d 501, 557-58 (Ga. 1998); *CMAX/ Cleveland, Inc. v. UCR, Inc.*, 804 F. Supp. 337, 359-60 (M.D. Ga. 1992) (in a very similar case involving computer software, where court found that the defendant willfully and maliciously misappropriated the plaintiff's trade secrets, the district court entered a permanent injunction pursuant to O.C.G.A. § 10-1-762 enjoining defendants permanently from "engaging in, undertaking, aiding, abetting, or facilitating the use, manufacture, distribution, lease, licensing or sale of the [subject software system], or any other merchandise, goods or articles constituting [copyright infringement] or misappropriation of [plaintiff's] trade secrets"); *Union Carbide Corp. v. Tarancon Corp.*, 742 F. Supp. 1565, 1581 (N.D. Ga. 1990).

In this case, where the jury found that the Respondents willfully and maliciously misappropriated the petitioner's trade secrets, the Seventh Amendment requires that the district court follow the jury's verdict and permanently enjoin the Respondents from using Group Data's trade secrets. The district court's injunction, however, wholly disregards the jury's findings and actually allows the Respondents to continue to use the very trade secrets they willfully and maliciously misappropriated from Group Data. Thus, apart from a brief four-month interruption in the marketing of the Morningside software, the injunction issued by the district court has done nothing to

prevent Respondents' use of Group Data's trade secrets and permits the continuing willful and malicious misappropriation found by the jury. An injunction which fails to remedy the wrong found by the trier of fact is errant as a matter of law, and the district court's injunction is plainly inconsistent with the jury's verdict.

The "head start" injunction espoused by the district court is a particular type of injunction utilized where the trade secrets that are the subject of the injunction have somehow entered the public domain, typically through a patent issuance. The goal of a head start injunction is to enjoin the misappropriator "for the length of time it would have taken the misappropriator to incorporate the trade secret had it not wrongfully used the information prior to public disclosure." *WebGraphics v. Jos. Hunkeler, Ltd.*, 682 F.2d 59, 60 (2d Cir. 1982). The rationale for such an injunction is that a wrongdoer should not be able to stand in the shoes of an innocent member of the public, who could otherwise legally use what were formerly trade secrets. *Bryan v. Kershaw*, 366 F.2d 497, 501 (5th Cir. 1966). No case authority in the Eleventh Circuit, or in any other jurisdiction, advocates the use of a head start injunction in a case where the trade secrets misappropriated were not, and have never been, in the public domain. The factual predicate for the application of this remedy therefore does not exist in this case, since the jury found that Group Data's trade secrets are *not* in the public domain.

In fashioning the four month injunction, the district court relied heavily on a Second Circuit decision, *Integrated Cash Management Services, Inc. v. Digital Transactions, Inc.*, 920 F.2d 171 (2d Cir. 1990), which makes

reference to the "head start" type of injunction. Yet, the holding of *Integrated Cash Management* unequivocally supports the permanent injunction sought by Group Data. *Integrated Cash Management* involved four generic, non-secret, banking computer programs that, in and of themselves, did not constitute trade secrets. 920 F.2d at 172. However, when taken together in combination as the plaintiff, ICM, had uniquely arranged them, the computer programs constituted a protectable trade secret. *Id.* at 173-74. Two of the individual defendants were former computer programmers for ICM who had gone to work for one of ICM's competitors, DTI. *Id.* at 172. Within weeks of their arrival at DTI, the individual defendants had assisted DTI in developing a computer program that was substantially similar to ICM's banking program. *Id.*

Following a bench trial, the district court concluded that DTI and the individual defendants had misappropriated ICM's trade secrets and had used the secrets in developing DTI's competing programs. *Id.* at 173. To remedy this misappropriation, the district court issued two separate injunctions. First, the court enjoined the individual defendants from using any version of the four generic, non-secret programs and from contributing to the creation of any new programs embodying these four non-secret programs for a period of six months. *Id.* Second, and more importantly, the court *permanently* enjoined the defendants from using or distributing any version of the programs they had created by using ICM's trade secrets. *Id.* On appeal the Second Circuit affirmed the permanent injunction against the defendant's use or distribution of the defendant's version of the programs that utilized ICM's trade secrets.

> In contrast to the district court's six-month injunction against the defendants' use of ICM's [generic, non-secret] programs, the court's perpetual injunction is aimed at preventing defendants' distribution of those programs as they existed on October 26, 1989 [the date of the court's decision]. Defendants are thereby prevented from simply **shelving the misappropriated information** for six months, and then distributing the ICM product as their own. Following the six month period, defendants may internally use ICM's four generic programs and may alter or modify them as they choose. However, defendants may not distribute any unmodified ICM programs either during or after the six month period.

920 F.2d at 175 (emphasis added). Here, the district court did exactly what the *Integrated Cash Management* court disallowed – it merely required Respondents to shelve the misappropriated product (Morningside) for four (4) months, and then allowed them to continue to distribute the misappropriated product as their own.

Significantly, the remedies imposed by the *Integrated Cash Management* court are far more stringent than the injunction sought by Group Data. Group Data has never sought to prohibit individual Respondent Linton from engaging in his area of technical expertise and has not sought to prohibit Respondents from developing and marketing their own banking software. Group Data simply seeks to prohibit Respondents from continuing to use and market the Morningside software which the jury found embodies the trade secrets the Respondents willfully and maliciously misappropriated from Group Data.

The other cases relied upon by the district court likewise do not support the imposition of a head start injunction as the remedy for Respondents' misappropriation. Four of the cases, *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970 (9th Cir. 1991), *WebGraphics v. Jos. Hunkeler, Ltd.*, 682 F.2d 59 (2d Cir. 1982), *Bryan v. Kershaw*, 366 F.2d 497 (5th Cir. 1966), and *Prescott v. Morton Int'l, Inc.*, 769 F. Supp. 404 (D. Mass. 1990), involved trade secrets made public through a patent issuance or otherwise, unlike the trade secrets here. Petitioner does not dispute that eliminating the misappropriator's "head start" makes sense in that context, but where, as here, a party misappropriates trade secrets which have still never entered the public domain, the head start injunction has no logical or equitable merit. Unlike the trade secrets in *Lamb-Weston, WebGraphics, Bryan,* and *Prescott,* the jury here found that the Cardinal/400 software never reached the public and remains a trade secret to this day. These cases are therefore clearly inapplicable and provide no support for the district court's injunction.

The remaining two cases cited by the district court in support of its issuance of a head start injunction, *A.L. Laboratories, Inc. v. Philips Roxane, Inc.*, 803 F.2d 378 (8th Cir. 1986) and *General Electric Co. v. Sung*, 843 F. Supp. 776 (D. Mass. 1994), while not involving the issuance of a patent, are factually inapposite to this case. *A.L. Laboratories, Inc. v. Philips Roxane, Inc.*, 803 F.2d 378 (8th Cir. 1986), is inapposite because the basis for the district court's fifty-one (51) month injunction was that Missouri law would not allow the entry of a "permanent injunction." The case involved unique facts, where a product had already gained FDA approval (based on illegally used

trade secrets), and the question was whether the defendant could market the product. A head start injunction was the only available remedy since the court could not bar such marketing permanently under Missouri law. Georgia law is different (as are all of the material facts in the instant case) and allows such a permanent injunction. *See CMAX/Cleveland, Inc. v. UCR, Inc.*, 804 F. Supp. 337 (M.D. Ga. 1992).

In *General Electric Co. v. Sung*, 843 F. Supp. 776 (D. Mass. 1994),[1] the jury found that GE's competitor and former employee misappropriated GE's trade secrets in the industrial diamond manufacturing process. Rather than prohibiting the defendant from using GE's trade secrets, the court imposed an extremely onerous seven (7) year "production injunction" which prohibited the defendant from manufacturing industrial diamonds *altogether* for a period of seven years, regardless of whether the defendant employed GE's trade secrets in the manufacturing process. *Id.* at 779-80. The district court found that a "use injunction" would be inadequate to eliminate the competitive advantage gained by the defendant through its misappropriation. To the extent that the *Sung* decision has any applicability here, the decision would require an injunction prohibiting Respondents from developing or selling banking software of any type at all for a specified period of time. This relief is much more restrictive than the relief sought by Group Data: an injunction barring Respondents from continuing to compete directly with

---

[1] The *Sung* case ultimately settled, so it provides little guidance as to the issues such an injunction raises, issues very much alive in this case.

Group Data by marketing software that embodies Group Data's trade secrets. The injunction sought by Group Data would only restrict Respondents' use and marketing of the Morningside software, not Respondents' use and marketing of banking software generally, and would not affect their sale and marketing of banking software that does not incorporate Group Data's trade secrets.

The summary *per curiam* decision by the Court of Appeals affirming the district court's issuance of a *de minimus* four month "head start" injunction conflicts with the authoritative decisions from the other United States Courts of Appeals that have addressed the issue, including the very authority cited by the district court, none of which have permitted the entry of a head start injunction where the jury finds misappropriation of trade secrets which have not entered the public domain. The failure of the Court of Appeals and the district court to accept the jury's findings and to view them in the light most favorable to Group Data deprived Group Data of its constitutional right to a jury trial by negating the jury's verdict as it applied to the most important remedy of the case, the injunction. Equity cannot condone the Court of Appeals allowing Respondents to continue to use and profit from the trade secrets they willfully misappropriated, thereby vitiating the jury's findings.

This Court should exercise its supervisory power to correct the injustice caused by the district court's nullification of the jury's verdict. The district court, ostensibly under its discretionary, equitable power, entered an injunction in derogation of the jury's verdict and accordingly failed to accept the jury's findings as binding. The district court and the Court of Appeals, by respectively

issuing and affirming an injunction which contravenes the jury's verdict, re-examined the facts found by the jury in contravention of the Seventh Amendment and violated Petitioner's right to a trial by jury.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court to issue a Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

SAMUEL D. LIPSHIE
THOR Y. URNESS
BOULT, CUMMINGS, CONNERS & BERRY, PLC
414 Union Street, Suite 1600
Nashville, Tennessee 37219
(615) 244-2582
Attorneys for Petitioner

In the United States District Court
for the Southern District of Georgia
Brunswick Division

SOUTHEASTERN BANKING CORPORATION,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
GROUP DATA SERVICES INCORPORATED,	:	
Defendant and Third Party Plaintiff,	:	
v.	:	
JOHN E. LINTON and the MORNINGSIDE CORPORATION,	:	
Third Party Defendants.	:	NO. CV297-149

ORDER REGARDING MOTION FOR ENTRY OF PERMANENT INJUNCTION

(Filed May 11, 1999)

Group Data Services, Inc. (hereinafter, "GDS"), has moved the Court for entry of a permanent injunction, forever barring Defendants, John Linton and his Morningside Corporation (hereinafter collectively, "Linton"), from using, marketing, or otherwise exploiting Morningside software. Relying on the jury's finding that Linton misappropriated trade secrets contained in GDS' Cardinal/400 program and then used those trade secrets

to facilitate the development of Morningside software, GDS contends that the Court must exercise its equitable powers to prevent Linton from continuing to profit from unlawful misappropriation.

After weighing the equities and examining pertinent law, the Court will find that GDS' Motion for a Permanent injunction should be DENIED.

The Court also will find, however, that Linton should be enjoined from use, marketing, or other exploitation of Morningside for such a period of time as to deprive him of the competitive advantage he gained through misappropriation. To that end, an **ORDER FOR INJUNCTIVE RELIEF** is appended to this Order.

I. RELEVANT FACTS

GDS brought claims of misappropriation of trade secrets, breach of duties of loyalty and fiduciary duty, and tortious interference with contractual and business relations against John Linton and the Morningside Corporation. GDS asserted that it possessed trade secrets in the source code for Cardinal/400, a banking software program,[1] and that John Linton had stolen those secrets for use in creating his own competing software program. Although John Linton had created Cardinal/400, he did so under a contractual agreement that granted proprietary rights in the software to GDS' predecessor in interest. Upon evaluating the evidence, the jury found that

---

[1] Source code is programming language, a combination of abbreviated words, acronyms, and common mathematical symbols.

GDS had taken sufficiently reasonable precautions regarding the confidentiality of Cardinal/400 source code and thus possessed protectable trade secrets in the software.

When John Linton left GDS' employ, he created his own software program, Morningside. GDS contended that Linton had copied or "whitewashed" GDS' trade secrets contained in Cardinal/400 and then used those secrets as the foundation for Morningside.[2] In support of this contention, GDS adduced much evidence of similarities between Cardinal/400 source code and Morningside source code, as well as evidence that Linton had developed Morningside in such a relatively short period of time as to give rise to the inference that he had used stolen portions of Cardinal/400.

On March 13, 1999, after a four day trial, the jury returned a verdict finding that Linton had willfully misappropriated trade secrets belonging to GDS, breached duties of loyalty and fiduciary duties owed to GDS, and tortiously interfered with GDS' contractual and business relations with the Southeastern Banking Corporation. GDS thereafter moved for injunctive relief, requesting that the Court permanently enjoin both Linton and three banks that use Morningside from further "exploitation" of Morningside.

---

[2] GDS argued that Linton had made cosmetic changes to certain elements of Cardinal/400 source code and then used those elements as building blocks for the new software program.

II. APPLICABLE LAW

The Court has discretion to award injunctive relief for misappropriation of trade secrets and, further, may tailor its injunction to suit the particular circumstances of the case before it. Under the Georgia Trade Secrets Act of 1990, at O.C.G.A. § 10-1-762(a), a Court may enjoin misappropriation for a period of time that terminates when the trade secret has ceased to exist. Under "appropriate circumstances," the Court may extend that period of time "for reasons including, but not limited to, an elimination of commercial advantage that would otherwise be derived from the misappropriation." Section 10-1-762(b) provides that, in "exceptional circumstances," in which the Court has deemed it unreasonable to prohibit future use, "an injunction may condition future use upon payment of a reasonable royalty. "Exceptionial circumstances" are defined to include "a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation." A Court may compel affirmative acts to protect a trade secret. O.C.G.A. § 10-1-762(c).

Injunctive relief should be crafted carefully to address the specific harm alleged. *See Califano v. Yamasaki*, 442 U.S. 682, 702, 99 S. Ct. 2545, 2558, 61 L. Ed.2d 176 (1979) ("injunctive relief should be no more burdensome to the defendants than necessary to provide complete relief to the plaintiffs"). An overbroad injunction is an abuse of discretion. *See, e.g., Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991). In the context of trade secret misappropriation, injunctive relief is deemed especially appropriate because damages are often so difficult to quantify, but such relief must be

focused on eliminating commercial advantages derived from misappropriation. *Id.* at 975.

In considering equitable relief, the Court must balance the rights of a trade secret owner with policies favoring competition and allowing employees to make use of their own skills and experience. The tension between these concerns is particularly pointed when a technically skilled employee is found to have misappropriated trade secrets belonging to his former employer. In a case somewhat analogous to the case before the Court, the Second Circuit approved an injunction prohibiting two computer programmers for six months from working on software programs substantially similar to those they designed for their previous employer. *See Integrated Cash Management Services, Inc. v. Digital Transactions, Inc.*, 920 F.2d 171 (2d Cir. 1990). Reasoning that six months was the period needed to neutralize the "head start" gained from the programmers' improper use of their former employer's trade secrets, the District Court had limited its prohibition on use of any program created by those programmers to that period so as to avoid "prevent[ing] the individual defendants from employing their extensive skills in their new business or from earning their livelihoods." *Integrated Cash Management Services, Inc. v. Digital Transactions, Inc.*, 732 F. Supp. 370, 378 (S.D.N.Y. 1989).

Such an approach, wherein a "head start" injunction is crafted with an eye to eliminating any unfair advantage a defendant may have gained by misappropriating trade secrets, has gained credence with many courts addressing the issue of injunctive relief for misappropriation of trade secrets. *See, e.g., Lamb-Weston, Inc.*, 941 F.2d at 974-75

("[a]n injunction in a trade secret case seeks to . . . eliminate any unfair head start the defendant may have gained"); *A.L. Laboratories, Inc. v. Philips Roxane, Inc.*, 803 F.2d 378, 384-85 (8th Cir. 1986) ("The alternative to permanent injunctive relief, a "head start" injunction, compensates for the time saved by a defendant by misappropriating a trade secret . . . "); *Web Graphics v. Jos. Hunkeler, Ltd.*, 682 F.2d 59, 60 (2d Cir. 1982) (acknowledging potential applicability of the "head start" approach); *Bryan v. Kershaw*, 366 F.2d 497, 501-02 (5th Cir. 1966) ("the unfair advantage gained is the damage that the injunction is designed to cure"); *General Electric Co. v. Sung*, 843 F. Supp. 776, 778 (D. Mass. 1994) (citing elimination of the "unfair advantage obtained by the wrongdoer" as one purpose of an injunction in a trade secrets case) (citation omitted); *Prescott v. Morton Int'l. Inc.*, 769 F. Supp. 404, 409 (D. Mass. 1990) (noting that appropriate injunctive relief is "closely linked to the extra 'head start' time that the misappropriator gained"). The proper duration for such a "head start" injunction is the amount of time it would have taken the defendant to develop his product legitimately without use of the Plaintiff's trade secret. *See Lamb-Weston, Inc.*, 941 F.2d at 974-75 (listing cites); Rockwell Graphic Systems, Inc. v. DEV Indus., Inc., 1993 WL 286484, *8 (N.D. Ill.); *Integrated Cash Management Services, Inc.*, 732 F. Supp. at 378.

III. DISCUSSION

A. Injunctive Relief Against Linton

In the interest of "leveling the playing field," the Court thus will impose an injunction for a period of time

sufficient to deprive Linton of any advantage gained by misappropriating Cardinal/400 source code.[3] Evidence adduced at trial and reiterated by counsel for parties at the recent hearing on issues of injunctive relief and attorneys' fees shows that the basic source code for Cardinal/400 was developed in 18 months, while the basic source code for Morningside was developed in 14 months. Although GDS adduced trial testimony that development of Morningside should, in the absence of misappropriation, have taken many years, it is difficult to reconcile that notion with GDS' admission that Cardinal/400 was developed in 18 months.[4]

Because John Linton wrote the source code for both programs, the Court finds a comparison of development times a particularly apt basis for arriving at an estimate of Linton's unjust "head start." On the basis of development times as stated and agreed upon by the parties, it seems, then, that Linton gained a four month lead, an

---

[3] GDS does not contend that Morningside is a copy of Cardinal/400. GDS argued, rather, that Linton had copied certain portions of Cardinal/400 and then used those portions as a starting point for his development of Morningside.

[4] The Court is at somewhat of a loss with regard to the issue of development time. GDS' expert, W.P. Caldwell, Jr., has stated that it is "not credible" that a software program like Morningside could have been developed in "a compact 18 [sic] month period of time." (GDS' Prelim. Expert Rpt. at 2-3, 10.) If it is "beyond belief" that John Linton could have developed such a program in that amount of time, what significance is the Court to ascribe GDS' assertions at trial (and most recently at the hearing on issues of injunctive relief and attorneys' fees) that John Linton developed Cardinal/400 in 18 months?

advantage in development time. The Court has been presented no other evidence on commercial benefits that Linton may have gained by misappropriating Cardinal/400 source code.[5] As indicated in the appended Order for Injunctive Relief, the court thus will enjoin Linton from using, marketing, or otherwise exploiting Morningside for a period of four months.

B. Injunctive Relief Against Morningside User-Banks

Linton has marketed Morningside software to four different banks: the Citizens Bank of Batesville, Arkansas; First National Bank and Trust of Mountain Home, Arkansas; the Petit Jean State Bank of Morrilton, Arkansas; and the Southeastern Bank of Darien, Georgia. GDS has settled its dispute with Southeastern Bank but requests that the Court bar the other three Morningside user-banks from further use of Morningside software. GDS contends that the banks had notice of Linton's legal difficulties, therefore notice of his misappropriation, and may thus appropriately be enjoined.

---

[5] The jury has already compensated GDS for past economic damages in the amount of $98,380.00. That amount, to quote GDS, "corrected [Linton's] unjust enrichment at the expense of [GDS]." "[T]he monetary award was for [GDS'] damages for *all* of [Linton's] wrongful actions, including . . . the claims under the Georgia Trade Secrets Act." (emphasis in original) (Pl.'s Resp. Opp. Defs.' Mot. New Tr. at 19.)

The Court's Order for Injunctive Relief is concerned solely with prospective harm.

None of the Morningside user-banks is before the Court, and it hesitates to accept GDS' conclusory characterization of those banks as "participants" with "full notice" of Linton's misappropriation. Moreover, the record shows that even after GDS had undisputed knowledge of John Linton's intention to develop and market competing software, GDS did not move for preliminary injunctive relief or otherwise act to preserve its rights with regard to Linton's potential customers. Having stood by and allowed the user-banks to change their position by converting to Morningside software, GDS will not now be heard to argue that it is entitled to equitable relief against them.

The Georgia Trade Secrets Act expressly provides for "exceptional circumstances" where a party has made a "material and prejudicial change in position" such that the Court deems it unreasonable to prohibit further use of the product based on misappropriated trade secrets. *See* O.C.G.A. § 10-1-762(b). *Compare Anaconda Co. v. Metric Tool and Die Co.*, 485 F. Supp. 410, 429 (E.D. Pa. 1980) (finding that "the expansion of one's business and the expenditure of capital to undertake an activity which is later subjected to legal challenge is the kind of change of position which will support the defense of laches") (citations omitted). Georgia law contemplates payment of a "reasonable royalty" in such circumstances. *See, e.g., Electronic Data Systems Corp. v. Heinemann*, 493 S.E.2d 132, 135 (Ga. 1997). The Court has not been presented with any evidence allowing it to construe a "reasonable" royalty and hence will decline to invoke its equitable powers in an effort to enjoin or otherwise command any of the user-banks.

IV. CONCLUSION

The Motion for Permanent injunctive Relief against Third Party Defendants, John E. Linton and the Morningside Corporation, is hereby **DENIED.**

The Court further orders that a "head start" injunction for a period of four months, as more fully described in the appended **ORDER FOR INJUNCTIVE RELIEF,** will become effective on the date it is entered by the Clerk of Court.

SO ORDERED, this 11 day of May, 1999.

/s/ Anthony A. Alaimo
JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF GEORGIA

In the United States District Court
for the Southern District of Georgia
Brunswick Division

SOUTHEASTERN BANKING CORPORATION,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
GROUP DATA SERVICES INCORPORATED,	:	
Defendant and Third Party Plaintiff,	:	
v.	:	
JOHN E. LINTON and the MORNINGSIDE CORPORATION,	:	
Third Party Defendants.	:	NO. CV297-149

ORDER FOR INJUNCTIVE RELIEF

(Filed May 11, 1999)

Group Data Services, Inc. (hereinafter, "GDS") initiated this action against John Linton and the Morningside Corporation (hereinafter collectively, "Linton"), as a third party claim for misappropriation of trade secrets contained in GDS' Cardinal/400 banking software, breach of duties of loyalty or fiduciary duties owed GDS, and tortious interference with GDS' business and/or contractual relations with the Southeastern Banking Corporation. With regard to misappropriation of trade secrets, GDS

specifically claimed that Linton had used misappropriated portions of Cardinal/400 source code and used them to create his own banking software system, Morningside.

The action was tried before a jury from March 8, 1999, until March 12, 1999. The jury returned its verdict on March 13, 1999, finding that Linton had misappropriated and used trade secrets from the Cardinal/400 software belonging to GDS.

In view of the jury's decision and the reasons detailed in the Court's discussion above, injunctive relief is warranted as set out below:

Pursuant to the provisions of O.C.G.A. § 10-1-762, it is therefor ordered that:

A. Definitions:

(1) "GDS" shall mean Group Data Services, Incorporated, Third Party Plaintiff in the case styled *Southeastern Banking Corporation v. Group Data Services, Inc.*, Civil Action No. 297-149;

(2) "Linton" shall mean Third Party Defendants in the case styled *Southeastern Banking Corporation v. Group Data Services, Inc.*, Civil Action No. 297-149, John E. Linton and the Morningside Corporation, including Morningside employees, Vickey Kinney and Mark Whiting;

(3) "Parties" shall mean GDS and Linton, individually and collectively;

(4) "Trade secret" shall have the meaning set out in the Georgia Trade Secrets Act of 1990 at O.C.G.A. § 10-1-764(4);

(5) "Source code" shall mean the programming language used to create and memorialize software programs such as Cardinal/400 and Morningside;

(6) "Cardinal/400" shall mean the source code for the banking software system created by Linton for GDS, pursuant to his contract with GDS' predecessor-in-interest;

(7) "Morningside" shall mean the source code for the banking software system created by Linton for use in competition with GDS;

(8) "GDS' trade secrets" shall mean, in addition to the definitions set out in paragraph (4), those portions of the Cardinal/400 source code that the jury found Linton used in creating Morningside; and

(9) "Existing Morningside customers" shall mean the Citizens Bank of Batesville, Arkansas, First National Bank and Trust of Mountain Home, Arkansas, and the Petit Jean State Bank of Morrilton, Arkansas, and any other entity listed by Linton pursuant to the provisions of paragraph (12).

B. Parties to this Injunction

(10) The provisions of this Order shall bind the Parties and their officers, directors, employees, agents, successors-in-interest, and assigns.

C. Injunction

(11) As of the date that this Order is entered by the Clerk of Court, Linton is enjoined from using or marketing or otherwise soliciting buyers or licensees of Morningside software for a period of four (4) months.

(12) Within thirty (30) days of the date this Order is entered by the Clerk of Court, Linton is directed to file with the Court and provide to GDS an affidavit setting out and certifying as accurate a list of those entities, banks or other, with whom he has conducted negotiations or other business dealings concerning use, marketing, sale, or license of Morningside.

(13) During the four (4) month period of this injunction, Linton is free to petition the Court for leave to service existing Morningside customers, but is hereby ordered that the fees provided to Linton for such services rendered during the period of this injunction shall be remitted to GDS.

(14) Linton shall file with the Court and provide to GDS an affidavit certifying compliance with the provisions of paragraph (13).

(15) In the event that Linton fails to comply with paragraphs (13) or (14) of this Order, the injunction period set out in paragraph (11) shall be tolled until such time as Linton is in complete compliance, when the time shall again begin to run.

D. Auditing

(15) GDS shall have the right, at its own expense, to appoint an independent auditor who is not associated with GDS, Linton, or any competitor of GDS or Linton, to inspect Linton's books and records (not to include Morningside source code) at monthly intervals during the pendency of this injunction. The auditor shall submit a report to GDS and Linton and the Court if the auditor determines that Linton is not in compliance with the provisions of paragraphs (11)-(14).

E. Effective Date

(16) This Order for Injunctive Relief shall become effective on the date and time that it is entered by the Clerk of Court and served by the Marshal on John R. Ferrelle, Esquire, Attorney, for the Defendants.

SO ORDERED, this 11th day of May, 1999.

/s/ Anthony A. Alaimo
JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF GEORGIA

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-11642

D.C. Docket No. 97-00149-CV-2

GROUP DATA SERVICES, INC.,

Third-Party-Plaintiff-Appellant,

versus

JOHN E. LINTON, MORNINGSIDE CORPORATION,

Third-Party-Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(March 22, 2000)

Before CARNES, BARKETT, and WILSON, Circuit Judges.

PER CURIAM:

Group Data Services, Inc. appeals the district court's denial of a permanent injunction barring John Linton and Morningside Corporation from using, marketing or otherwise exploiting software that a jury had determined constituted a trade secret belonging to Group Data.

After a jury awarded $98,380 in compensatory damages and $1 in punitive damages to Group Data on their claims for misappropriation of trade secrets, breach of

fiduciary responsibility, and tortious interference with business, Group Data moved for entry of a permanent injunction, pursuant to O.C.G.A. § 10-1-762(a) and Fed. R. Civ. P. 65, barring Linton and Morningside from using, marketing, or otherwise explaining the software. The district court denied the motion for a permanent injunction, but did enjoin Linton from using, marketing or otherwise exploiting the software for a period of four months, to compensate for the competitive advantage Linton gained through misappropriation. The district court ruled that an injunction for such period of time was sufficient to deprive Linton of any advantage he had gained by misappropriating the software.

We review the district court's grant of injunctive relief for abuse of discretion. *See Sunamerica Corp. v. Sun Life Assur. Co. Canada*, 77 F.3d 1325, 1333 (11th Cir. 1996). We accept the district court's findings of fact unless they are clearly erroneous and review questions of law *de novo*. Thus, the district court has considerable discretion in fashioning suitable relief and defining the terms of an injunction. Appellate review of those terms is correspondingly narrow. Based upon our review of this record and the findings of fact of the district court, we conclude that the four month injunction was reasonable, and thus, not an abuse of discretion.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-11642-HH

GROUP DATA SERVICES, INC.,

Third-Party-Plaintiff-Appellant,

versus

JOHN E. LINTON, MORNINGSIDE CORPORATION,

Third-Party-Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19___, ___F.2d___).

(Filed Jun. 08, 2000)

Before: CARNES, BARKETT, and WILSON, Circuit Judges.

PER CIRUAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate

Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR the COURT:

/s/ Rose Barkett
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

GROUP DATA SERVICES, INC.,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
JOHN E. LINTON and MORNINGSIDE CORPORATION,	:	
Defendants.	:	NO. CV297-149

SPECIAL VERDICT FORM

(Filed March 13, 1999)

1. Do you, the Jury, find that the Defendants misappropriated trade secrets belonging to the Plaintiff?

Yes ✓ No _____

2. Do you, the Jury, find that the Defendants breached duties of loyalty or fiduciary duties owed to the Plaintiff?

Yes ✓ No _____

3. Do you, the Jury, find that the Defendants tortiously interfered with the Plaintiff's business relationship with Southeastern Banking Corporation or with the Plaintiff's contractual relations with Southeastern Banking corporation?

Yes ✓ No _____

If you answered "No" to Questions number 1, 2, **AND** 3, the foreperson should date and sign the Special Verdict Form and the Jury shall return to the Courtroom.

If you answered "Yes" to Question number 1, 2, **OR** 3, continue on to answer Questions number 4 and 5.

4. What amount of damages, in dollars and cents, do you, the Jury, find that the Plaintiff has consequently suffered?

$ 98,380[00]

5. Do you, the Jury, find that the Plaintiff is entitled to punitive damages?

Yes ✓ No _____

$1.00

SO SAY WE ALL.

3/13/99 /s/ Reginald G. Mims IV
Date Foreperson

United States District Court

Southern District of Georgia

GROUP DATA SERVICES, INC.

v.

JOHN E. LINTON AND MORNINGSIDE CORPORATION

JUDGMENT IN A CIVIL CASE

(Filed March 29, 1999)

CASE NUMBER: CV297-149

[X] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[ ] **Decision by Court.** This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that in accordance with such verdict, the Plaintiff, GROUP DATA SERVICES, INC., do have and recover of the defendants, JOHN E. LINTON and MORNINGSIDE CORPORATION, the sum of NINETY EIGHT THOUSAND THREE HUNDRED EIGHTY AND NO/100 ($98,380.00) DOLLARS in damages and ONE ($1.00) DOLLAR in punitive damages together with costs of court, said costs to be taxed by the Clerk of this Court. The question of equitable relief and attorney fees are reserved by the Court for later decision.

APPROVED:

/s/ Anthony A. Alaimo
Judge, U.S. District Court

March 17, 1999
Date

Henry R. Crumley, Jr.
Clerk

/s/ Nita Rose
(By) Deputy Clerk